

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-1596

In Re: JOHN D. HORTON,

Petitioner.

On Petition for Writ of Mandamus.
(CA-04-227-BO)

Submitted: August 25, 2005

Decided: August 31, 2005

Before TRAXLER and SHEDD, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Petition denied by unpublished per curiam opinion.

John D. Horton, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

John D. Horton petitions for writ of mandamus. He seeks an order directing the Clerk of the United States District Court for the Eastern District of North Carolina to file his notice of appeal in Horton v. Shull, No. 5:04-CV-227-BO.

Mandamus relief is available only when the petitioner has a clear right to the relief sought. See In re First Fed. Sav. & Loan Assn., 860 F.2d 135, 138 (4th Cir. 1988). Further, mandamus is a drastic remedy and should only be used in extraordinary circumstances. See Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); In re Beard, 811 F.2d 818, 826 (4th Cir. 1987). Mandamus may not be used as a substitute for appeal. See In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979).

The notice of appeal Horton seeks to file has been filed in the district court. Accordingly, we deny the petition for writ of mandamus as moot. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED